

# Exhibit 5

## (Filed Under Seal)



Deposition of:  
**Derek Muehrcke , M.D.**

*January 11, 2019*

In the Matter of:  
**In Re: Bard IVC Filters Products  
Liability**

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1 being intubated for three or four days, and the fact  
2 that someone could be intubated very easily is very  
3 consistent with tracheomalacia. It doesn't cause  
4 stenosis, it causes a collapsing of the trachea. And  
5 it can cause problems with extubation, but she didn't  
6 have a problem with that.

7 So based on the bronchoscopy which proved  
8 she had tracheomalacia, I think she has it, and to  
9 say otherwise just is contrary to the facts.

10 Q. And going back to the arrhythmia, cardiac  
11 failure that you -- it's your opinion that Debra  
12 Tinlin is at risk from her filter. Correct?

13 A. I think she's at risk from her -- I'm  
14 sorry. Can you repeat the question?

15 Q. Sure. Do you believe -- is it your  
16 opinion that Debra Tinlin is at risk of complications  
17 including arrhythmia and cardiac failure due to her  
18 filter complications?

19 MS. HELM: Object to the form.

20 THE WITNESS: Yes, I do. I think that her  
21 filter disintegrated in her body and sent three  
22 fragments to her lungs and two into her heart which  
23 required extensive cardiac surgery with a bypass time  
24 of over four hours and nine minutes, and she's at  
25 risk for future problems. This can happen again

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1 because her filter is still in place, missing several  
2 arms, several struts, and it is unstable.

3 Q. (By Mr. O'Connor) And is that your  
4 opinion regardless whether medical records show that  
5 Debra Tinlin's heart has normal function at the  
6 present time?

7 A. Correct.

8 Q. And are those opinions you hold to a  
9 reasonable degree of medical probability?

10 A. Yes.

11 Q. And you were asked questions about earlier  
12 CT scans and issues about what they depicted in terms  
13 of fragments. Do you recall that? For example, 2008  
14 and I think 2012?

15 A. Yes.

16 Q. Are you providing or claiming any  
17 radiologist or anybody that did not appreciate or  
18 recognize the failed -- the fractured struts were  
19 below the standard of care?

20 MS. HELM: I'm going to object to the  
21 form. It exceeds the scope of his report.

22 THE WITNESS: I'm not critical of anybody.

23 Q. (By Mr. O'Connor) As a matter of fact, at  
24 that time back in 2008, 2012, was the medical  
25 community informed in terms of the failures as well

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1 MS. HELM: Object to the form.

2 THE WITNESS: I think there's going to be  
3 permanent scarring of her heart and inflammation  
4 around her heart. And her tricuspid valve may need  
5 to be replaced in the future.

6 Q. (By Mr. O'Connor) And why is that?

7 A. Because anytime you do a tricuspid valve  
8 repair with coronal reconstructions, there's a higher  
9 risk of requiring a replacement down the line.

10 Q. And the fact that Debra Tinlin went  
11 through the medical course that she did for the  
12 filter failure, the Recovery Filter failure, does  
13 that place her -- her condition and the injuries she  
14 sustained place her at risk for the development of  
15 future conditions such as arrhythmias?

16 A. Yes.

17 Q. Same with cardiac failure?

18 A. Yes.

19 Q. Does it place her more at risk than a  
20 patient who had not undergone the type of medical  
21 procedures that Debra Tinlin went through?

22 A. Any person who has not had their left  
23 ventricle opened up would be at a lower risk than her  
24 of developing cardiac failure.

25 Q. So is she at a greater risk than a person

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1 who did not experience filter failure or procedures  
2 to address the failure of a Recovery Filter?

3 A. Yes.

4 Q. Is that an opinion you hold to a  
5 reasonable degree of medical probability?

6 A. Yes.

## FURTHER EXAMINATION

8 BY MS. HELM:

9 Q. And Dr. Muehrcke, would you agree with me  
10 that on January 11, 2019, we're approximately five  
11 and a half years post Ms. Tinlin's surgery. Correct?

12 A. Yes.

13 Q. And you have not been provided with any  
14 medical records, any documentation, or any testimony  
15 that she's suffering from any arrhythmias, correct?

16 A. Correct.

17 Q. Any cardiac failure, correct?

18 A. Correct.

19 Q. Or any cardiac problems at all, correct?

20 A. Pain from her median sternotomy incision  
21 and her dislocated right sternoclavicular. And we'll  
22 watch her hernia, see what happens with that.

23 Q. Okay. But you haven't been provided with  
24 any information that indicates that she is  
25 experiencing any of those complications, correct?